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| 23117 | 7590 | 08/11/2005 | EXAMINER | |
| NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203 | | | WEBMAN, EDWARD J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1616 | |

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/986,124
Filing Date: November 07, 2001
Appellant(s): YUKSEL ET AL.

B. H. Davidson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/24/05.

5.20

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 30-47, 53-54 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

| | | |
|-----------|--------------|---------|
| 6,589,328 | NUSSINOVITCH | 7-2003 |
| 5,922,379 | WANG | 7-1999 |
| 6,236,524 | FATTMAN | 12-2001 |

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 30 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Nussinovitch.

Nussinovitch teaches biodegradable foams (abstract) made by combining a solution of alginate and calcium carbonate with a solution of citric acid (example 1 column 5). Gelatin, which is proteinaceous, is specified as equivalent to alginate (column 3 line 47). Medicinal sponges are disclosed (column 1 line 14), Generation of carbon dioxide is specified (example 1 column 5), indicative of the role of carbonate as a blowing agent.

Claims 30-47, 53, 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nussinovitch in view of Wang and Fattman et al.

Nussinovitch is described above. However, Nussinovitch does not teach glutaraldehyde as a crosslinker, ammonium bicarbonate as a blowing agent, nor fibers.

Wang teaches biodegradable foams comprising protein (abstract). Albumin and gelatin are disclosed as equivalent (column 3 line 50). Bicarbonate and citric acid are disclosed for generating carbon dioxide (column 56 lines 39-40). Crosslinking with glutaraldehyde to provide rigidity is disclosed (column 7 line 15). Reinforcement with natural fibers is specified (column 6 lines 29-30).

Fattman et al teach a hydrocolloid foam (title). Ammonium bicarbonate is disclosed as equivalent to calcium carbonate as a blowing agent (column 3 lines 36-48).

It would have been obvious to one of ordinary skill to add glutaraldehyde as a crosslinker to the citric acid solution of Nussinovitch to achieve the beneficial effect of achieving rigidity to the foam and to further add a natural fiber to the gelatin solution of Nussinovitch to achieve the beneficial effect of reinforcement in view of Wang. As to the claimed ammonium bicarbonate, Fattman et al teach it as equivalent to the calcium carbonate of Nussinovitch as a blowing agent. As to the claimed sterilization, such would be an obvious expedient for the medical sponges of Nussinovitch cited above. As to the claimed kit, the two solutions of Nussinovitch constitute such because a kit, in its broadest sense, is an assemblage of implements. Here, these implements are the two solutions, one comprising alginate and calcium carbonate and the other comprising citric acid. As to the claimed human or bovine albumin, such would be an obvious expedient to mitigate an immune response when the obvious composition is used as a diaper or hygienic pad (disclosed in column 1 line 11 of Nussinovitch).


(11) Response to Argument

Appellants argue that Nussinovitch do not teach a kit containing two separate and distinct solutions which must be used concurrently. However, Example I of Nussinovitch clearly teaches two such solutions. As previously averred, appellants' limitation of concurrent use is merely an intended use. At the beginning of example 1 in Nussinovitch, a table of ingredients is recited, including the alginate, carbonate and citric acid. The presence of such a table is asserted as indicative of the patentee's intent to prepare the solution of alginate and carbonate and the solution of citric acid beforehand. That is, both solutions were present temporally prior to succeeding manipulations using them. The two solutions, both present contemporaneously, are broadly interpreted to constitute a kit.

For the above reasons, it is believed that the rejections should be sustained.

Application/Control Number: 09/986,124
Art Unit: 1616

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August 5, 2005

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